

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-207-C

August 1, 2012

IN RE:	Application of ExteNet Systems, Incorporated) for a Certificate of Public Convenience and) Necessity to Provide Resold and Facilities-) Based Local Exchange and Interexchange) Telecommunications Services in the State of) South Carolina, and for Flexible Regulation and) for Alternative Regulation)	SETTLEMENT AGREEMENT
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This Settlement Agreement ("Settlement Agreement") is made by and among the Office of Regulatory Staff ("ORS") and ExteNet Systems, Inc. ("ExteNet" or the "Company") (collectively referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, on May 16, 2012, ExteNet filed its Application requesting (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to provide resold and facilities-based local exchange and interexchange telecommunications services throughout the State of South Carolina; (ii) alternative regulation of its interexchange business services, consumer card services, operator services, and private line services consistent with the Public Service Commission of South Carolina (the "Commission") Order Nos. 1995-1734 and 1996-55 in Docket No. 1995-661-C, as modified by Commission Order No. 2001-997 in Docket No. 2000-407-C; (iii) flexible regulation for its local exchange telecommunications services consistent with Commission Order No. 1998-165 in Docket No. 1997-467-C; and (iv) waiver of certain regulations of the Commission, specifically 26 S.C. Code Ann. Regs. 103-607 (Supp.

2011) regarding the bond or other security mechanism unless the utility has invested at least \$5,000,000 in telecommunications facilities in the State of South Carolina or a waiver has been requested, 26 S.C. Code Ann. Regs. 103-610 (Supp. 2011) regarding location of records, 26 S.C. Code Ann. Regs. 103-611 (Supp. 2011) regarding use of the Federal Communications Commission's ("FCC") Uniform System of Accounts ("USOA"), 26 S.C. Code Ann. Regs. 103-612-2.3 (Supp. 2011) regarding the filing of operating area maps, and 26 S.C. Code Ann. Regs. 103-631 (Supp. 2011) regarding the publication and distribution of local exchange directories;

WHEREAS, on May 22, 2012, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS on May 25, 2012, the Commission issued a Notice of Filing and Hearing and established a return date of June 25, 2012, for the filing of letters of protest or petitions to intervene and established a hearing date of August 20, 2012, for the Application to be heard before a hearing examiner;

WHEREAS, on June 1, 2012, the Commission issued its Order No. 2012-427 by which the Commission appointed Josh M. Minges, Esquire as the Hearing Examiner in this matter;

WHEREAS, on June 25, 2012, the South Carolina Telephone Coalition filed a Petition to Intervene in this Docket;

WHEREAS, on July 9, 2012, ExteNet pre-filed the direct testimony of Terry Ray with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by the Company and its requests for (i) a Certificate of Public Convenience and Necessity to provide resold and facilities-based local exchange and interexchange telecommunications services throughout the State of South Carolina; (ii) alternative regulation of its interexchange business

services, consumer card services, operator services, and private line services consistent with Commission Order Nos. 1995-1734 and 1996-55 in Docket No. 1995-661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C; (iii) flexible regulation for its local exchange telecommunications services consistent with Commission Order No. 1998-165 in Docket No. 1997-467-C; (iv) waiver of certain regulations of the Commission, specifically 26 S.C. Code Ann. Regs. 103-607 regarding the bond or other security mechanism unless the utility has invested at least \$5,000,000 in telecommunications facilities in the State of South Carolina or a waiver has been requested, 26 S.C. Code Ann. Regs. 103-610 regarding location of records, 26 S.C. Code Ann. Regs. 103-611 regarding use of the FCC's USOA, 26 S.C. Code Ann. Regs. 103-612-2.3 regarding the filing of operating area maps, and 26 S.C. Code Ann. Regs. 103-631 regarding the publication and distribution of local exchange directories;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical and managerial expertise of ExteNet to provide the services requested in the Application;

WHEREAS, ORS has reviewed ExteNet's financial statements filed as Exhibit C to the Application which was granted protective treatment on May 24, 2012 pursuant to the hearing examiner directive;

WHEREAS, ORS has calculated certain performance ratios based upon information provided by ExteNet;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs filed as Exhibit E of the Application;

WHEREAS, ORS has reviewed the pre-filed testimony of Terry Ray;

WHEREAS, as a result of its investigations, ORS has determined that (a) ExteNet intends to provide resold and facilities-based local exchange and interexchange telecommunications services throughout the State of South Carolina; (b) the officers of ExteNet possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, ExteNet appears to have access to sufficient financial resources necessary to provide the services proposed in its Application; (d) ExteNet's proposed tariffs set forth in Exhibit E of its Application with the revisions by ORS, accepted by the Company, comply with Commission statutes and regulations; (e) the services provided by ExteNet will meet the service standards required by the Commission; (f) the provision of services by ExteNet will not adversely impact the availability of affordable telecommunications services; (g) to the extent it is required to do so by the Commission, ExteNet will participate in the support of universally available telephone service at affordable rates; and (h) the provision of interexchange services by ExteNet will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree that ExteNet's Application and exhibits attached to the Application are incorporated into this Settlement Agreement and made a part hereof;

2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of ExteNet's witness Terry Ray without cross-examination by ORS;

3) The Company has submitted financial data, under seal, which was provided as Exhibit C to its Application, and which financial data is incorporated by reference;

4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services within the state of South Carolina;

5) ORS does not oppose the Company's requests (a) for flexible regulation for its local telecommunications service offerings consistent with Commission Order No. 1998-165 in Docket No. 1997-467-C, such flexible regulation including, specifically, (i) adoption of a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days and (b) for alternative regulation of its interexchange business services, consumer card services, operator services, and private line service offerings consistent with the procedures described and set forth in Commission Order Nos. 1995-1734 and 1996-55 in Docket No. 1995-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C, specifically (i) regulation of these services listed above in the same manner as these services are regulated of AT&T Communications of the Southern States, Inc.; (ii) removal of the maximum rate tariff requirements for ExteNet's business services, private line, and customer network-type offerings, except in instances governed by Commission Order No. 2001-997, which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (iii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the Commission; and (iv) grant ExteNet the same treatment

as AT&T Communications of the Southern States, Inc. in connection with any future relaxation of reporting requirements;

6) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-607 regarding the bond or other security mechanism unless the utility has invested at least \$5,000,000 in telecommunications facilities in the State of South Carolina or a waiver has been requested. ORS is agreeable to such a waiver if at such time as the Company plans to offer residential local exchange services in South Carolina, ExteNet will comply with the requirements of 26 S.C. Regs. 103-607;

7) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. § 58-9-380 (Supp. 2011) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff to be kept within the State. No books, accounts, papers or records required by the Office of Regulatory Staff to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in the State of Illinois, and the Company agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2011) or § 58-9-1070 (Supp. 2011). ORS expressly reserves its

rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties in compliance with any state or federal regulation;

8) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the USOA. The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2011) provides that ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission's jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund ("USF"), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs including but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

9) ORS does not oppose ExteNet's request for a waiver from filing operating maps as required pursuant to 26 S.C. Code Ann. Regs. 103.612-2.3;

10) ORS does not oppose ExteNet's request for waiver of 26 S.C. Code Ann. Regs. 103-631 which requires the publication and distribution of directories. ORS is agreeable to such a waiver if at such time as the Company plans to offer local exchange services in South Carolina,

ExteNet agrees to make arrangements with publishers of local directories in South Carolina to include the names and telephone numbers of ExteNet's subscribers and customers in local directories, unless a subscriber indicates his/her desire for an unpublished telephone number;

11) The Company agrees to maintain its books and records associated with its South Carolina operations in a manner that would permit ORS to examine any of ExteNet's reports filed with the Commission and provided to ORS;

12) The Company agrees to file with the Commission and ORS a completed authorized utility representative form within thirty (30) days of the Commission's order;

13) ExteNet agrees to resell the services only of those local exchange providers or interexchange carriers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, of its underlying interexchange carriers and if the Company changes its underlying interexchange carriers;

14) ExteNet agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

15) The Company agrees to file necessary financial information with the Commission and ORS for USF reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as ExteNet. The Parties agree that such reports shall be filed pursuant to ORS's instructions and that monies shall be remitted in accordance with the directions of ORS and the Commission's requirements;

16) In the event that the Company offers prepaid calling card services in the future, ExteNet agrees that it shall post a surety bond in the amount of \$5,000 as required by the

Commission;

17) In the event that the Company offers local and long distance services to end users, the Company agrees to comply with the verification regulations governing change of preferred carriers as established by FCC. In addition, in the event that the Company offers local and long distance services to end users, the Company agrees to comply with the marketing practices and guidelines established by the Commission in Order No. 1995-658;

18) The Company agrees to comply with S.C. Code Ann. § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, ExteNet agrees to adhere to the FCC's Rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

19) The Company agrees to comply with all orders, directives, guidelines, rules and regulations of the Commission unless the Commission has expressly waived such requirement, rule or regulation;

20) The Company agrees to file a final revised tariff with both ORS and the Commission within thirty (30) days of the Commission Order granting certification, and the revised tariff shall reflect and be in accordance with ORS's recommendations. Further, the Company agrees to file and maintain its tariff with the Commission electronic tariff filing system;

21) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2011). S.C. Code Ann. § 58-4-

10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

22) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein;

23) The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts with, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party;

24) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor

will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation;

25) This Settlement Agreement shall be interpreted according to South Carolina law; and

26) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

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Representing ExteNet Systems, Incorporated

A handwritten signature in cursive script, reading "Bonnie D. Shealy", written over a horizontal line.

Bonnie D. Shealy, Esquire

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